

THE LIMITS OF ENVIRONMENTAL POLICY

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When Bismarck said that politics was the art of the possible, it is highly unlikely that he had environmental policy in mind, or that he would have even recognised the meaning of the term, but the course of the last few years in Scotland suggests that the aphorism is as true in environmental affairs as in the wider field of world politics. But to start with a definition, in this article the term "environmental" is used in the way as in the 'Department of the Environment', to include housing and indeed some aspects of transport, the Scottish Office has adopted this grouping of functions before, and Whitehall. It thus reflects the entire range of responsibilities of Scottish Ministers and the Scottish Office for the built environment as well as the ought-not-to-be-built environment.

The essence of the argument is that the power of governments to achieve their objectives is not solely determined by the parliamentary situation and the command of financial resources, as constitutional theory sometimes suggests. The implementation of policies depends on a number of other significant factors, such as the inherent nature of the problem and whether it is amenable to legislative and executive action, the powers and pressures of local groups and local interests, the attitude of local authorities, and the force of public opinion expressing itself through Ministers, MPs, and Party workers. As a result, the success achieved in recent environmental policy in Scotland has varied very substantially.

Nothing more clearly demonstrates the power of a government to achieve certain objectives and to ignore the consensus views of local authorities and some influential pressure groups than the

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steps taken under the Tenants' Rights Etc (Scotland) Act 1980 to confer on public sector tenants the right to buy the houses in which they live, and security of tenure if they remain tenants. This controverts the view frequently expressed that the interplay of group pressures dominates policies. It is true that the Conservative Party was completely united on the issue of the right to buy. Party advocacy of this has been raised in the past few years from the level of a mere policy to that of unassailable dogma, and the Conservative Government was in no danger of a revolt by its backbenchers, except on peripheral issues such as the sale of houses in rural areas, unlike the Labour Governments of 1974-1979, many of whose backbenchers were distinctly unhappy even about the limited authorisations granted to local authorities to sell, and the proposals to grant security of tenure. But the reasons for the success of the policy went beyond the possession of a parliamentary majority; they included the facts that any threat of repeal, an Opposition's ultimate weapon, could not affect those who had already bought, and that the Government was proposing to confer a right on the public, or a large section of it, rather than to restrict rights. Much legislation imposes obligations on citizens, or has unwelcome side effects such as higher taxes, rates, or rents, but here we had legislation conferring rights which can be nothing but beneficial to those who decide to exercise them, and do not hurt others except on a long-term view of the stock of council houses. Furthermore the right was of a kind which could if necessary be operated through the Lands Tribunal without the co-operation of the housing authorities, an ingenious and far-seeing device. No doubt these were some of the reasons why, as early as March 1981, recalcitrant authorities were submitting to the Secretary of State's exercise of his default powers rather than seeking Clay-Cross-type martyrdom. Perhaps also this is why the vehement opposition of Shelter, who had so successfully secured legislation on homelessness, was this time quite ineffective. Significantly, too, local authorities were also unable to resist the other aspects of the Tenants' Rights Act, namely statutory security of tenure for council tenants, and other provisions of the "tenants" charter". This was a bit more surprising, since this policy, taken over from the Labour Government was opposed by some Conservative Councils, but

the Government remained quite firm.

Clearly the incremental theory - that policy changes which take place tend to be such as modify past policies only by degrees - hardly applies to the major reversal of policy between governments on the sale of council houses. Nor has it much bearing on council house rent policy. Labour, in 1974, took the pressure off councils to raise the proportion of housing costs met by rents, which went down from 55.8% in 1973-4 to 45.7% in 1976-7. The Conservatives tried exhortation for a year or so, but this did not prevent the figure going down to 44.2% in 1979-80.⁽¹⁾ In 1980 they therefore adopted a radically new measure. The circular announcing housing capital allocations for 1981-2⁽²⁾ trimmed allocations to individual authorities by the amount of shortfall in rent income (or part of it in special cases such as Glasgow). Low rent increases will thus in future mean a severe limitation on council house building and modernisation in the area concerned. In fact, the Scottish Office could have achieved the same result, and avoided the opprobrium of cutting council housing, if they had said that councils could build as much as they wanted provided the finance, above a certain level, was secured without further public expenditure, that is by raising rents, but this would perhaps have offended public expenditure conventions. Time will show how far councils will put up their rents in order to avoid capital punishment, but it would be surprising if the Government's objective is fully achieved, since attitudes to housing in Scotland make raising rents much more unpopular to the majority of councils than raising rates.

Unlike the legislative measures taken by the Conservative Government of 1970-74 to force local authorities to raise rents, the new device is one over which the Government has complete control, namely the level of capital investment. The Government can use its executive power to bring down the amount of public sector investment to any level which it thinks fit, and indeed housing has felt the brunt of Government policy to reduce public expenditure more than any other programme. It is, of course, a negative control, in the sense that it cannot force local authorities to invest more in housing or any other service than they wish to do, as the Labour Government found during its last years of

office, when the level of building activity by local authorities was probably falling more sharply than the Government would have wished (although the savings in public expenditure were welcome). However, one suspects it will be a long time before a government - of any complexion - is begging local authorities to increase capital expenditure, so this limitation is of little consequence.

Turning to the policies of local authorities for allocating their housing stock, Government action has so far proved ineffective, although 1980 produced legislation which may secure substantial changes. No government for the past 20 years at least has been satisfied with the restrictive, not to say parochial, policies pursued by local authorities in the allocation of houses to their own constituents and to certain favoured categories among those constituents. Time after time governments have sponsored reports by the Scottish Housing Advisory Committee, advocating the removal of restrictions on eligibility and more willingness to offer houses to incomers, all to remarkably little effect. The local authority housing stock still takes the form of 50 or more separate housing pools, each with its own rules for admission and very little provision for interchangeability. A significant advance, however, was made by Tenants' Rights Act, which abolished residential qualifications and required that many categories of incomers, including those seeking a job or already having one in the area, shall be treated in the same way as those already in the area. These measures were introduced and became law while the latest sub-committee of SHAC established under the Labour administration, was still deliberating, although its report⁽³⁾ implicitly approved them. They make a big change in the statutory position, but it will be surprising if actual practice matches legislative requirements. Opening the housing lists to a wider range of people damages established expectations, and this may continue to be a compelling pressure on councillors.

The history of the private landlord sector of housing over the past 50 or 60 years, as Roy Parker has pointed out⁽⁴⁾, demonstrates how easy it can be to take temporary measures to secure an objective - rent restriction and security of tenure - and how difficult to modify later the less welcome results of that action.

Conservative thinking as a whole, and at least Labour front bench thinking, regrets the perennial decline in the private rented sector both in quantity and quality which has ensued, as a result of landlords being unwilling or unable to invest in improvement and maintenance and anxious to sell as soon as they get the chance. The fair rents system was intended to halt the decline, while protecting existing tenants, but has failed to do so, and even the present government has found it impossible to take measures which would do more than marginally affect the decline. In the first place they are limited by the promise in their manifesto to maintain the security of existing tenants. In the second place the legislation included in the Tenants' Rights etc. (Scotland) Act to create a new category of short-term tenancies is restricted both by the fact that the rents are to be not uncontrolled but "fair", and by the Labour threat to repeal the system. This must make potential new landlords, on whom the Conservatives are relying, think twice before letting their property. Unlike council house purchase, this is an area where Opposition pledges to repeal can be effective, since permanent security of tenure can be granted to tenants who came in on a shorthol basis by a very simple piece of legislation.

If it is difficult to generalise about the success of recent Scottish administrations in achieving their objectives in housing, it is equally difficult with regard to town and country planning. Not that some things prove too difficult; for example, the incoming Conservative Government, like its predecessors in earlier decades, immediately dismantled the system of recouping development values for the benefit of the community which had been established under the Community Land Act. This merely involved withdrawing capital allocations for the scheme and subsequently repealing it in legislation secured by a comfortable parliamentary majority. The community land system, of course, had not established itself in favour to any great extent; the possibility of financial return on land bought for development by local authorities was too distant, and the scale on which the Labour Government had been able to permit investment was too small to create any significant effect. One can safely predict that no more will be done about the problem of private gain from publicly created land values under a Conservative administration and after three unsuccessful attempts

since the Second World War it is doubtful whether a Labour administration would try again.

Government success in the field of the preparation of town and country plans must be regarded as relatively limited. Structure plans for a good deal of Scotland, notably Strathclyde and the Lothians, were submitted and approved in 1978-1980 with relatively minor modifications, but progress in the preparation of local plans, which are the essential means of translating planning policies into action, has been lamentably slow. It would seem that District Planning Authorities are too preoccupied with day-to-day planning applications, or have allowed themselves to become too much involved in detail, and they are certainly under heavy Government pressure to reduce staff. It looks as if the objective of covering the country with both strategic and tactical plans to guide development will not be fully secured for a long time, unlike the highly successful completion of regional reports in 1976-78, and neither administration has been prepared to give the matter much priority.

It is in any case specific major planning applications rather than the formal structure plans which attract the concern of most Ministers. The power to call in a planning application from a local authority for their own decision is the major power available to Ministers in this regard, and the most important example of this in recent years in Scotland has been the Moss Morran/Braefoot Bay petrochemical development. This deserves a book in itself but the main points to be made in this brief study of the effectiveness of government policy are that a planning application for the development, strongly supported by the Department of Energy and the local authorities (and no doubt by the Secretary of State for Scotland, had he not been constrained from expressing an opinion by his quasi-judicial responsibilities) was submitted in mid-1977. It was not, however, granted and put beyond the possibility of further legal challenge until February 1980, owing to the skilful exploitation by a local, highly-motivated (and self-financed) group of objectors of an issue which had not been raised or even recognised at the public inquiry. But for this, the planning application would have been granted early in 1978. As it was, the Secretary of State could do no more than indicate at that time that he was pre-

pared to grant planning permission subject to considering representations on the new issue, a process expected originally to take only a month or two. The new issue was the evidence that under certain circumstances a leak of petrochemical gases might be ignited by radio transmissions, and in view of the fact that the Government had suspended radio transmissions from the defence installation at Crimond because of its proximity to the St Fergus Gas Terminal, the Secretary of State could not refuse to have this issue examined in regard to Moss Morran and Braefoot Bay. He decided to do so, somewhat surprisingly, without reopening the public inquiry. This in the end probably took longer than a resumed inquiry would have taken, owing to the meticulous care with which the Scottish Office had to circulate all representations and permit counter-representations, lest the decision was invalidated as contrary to natural justice. At one stage a judge did indicate that this might occur if the Secretary of State did not allow more time for representations. However, after lengthy consideration of reports by the Health and Safety Executive (flaws in which were identified by the objectors and used to secure further delay) planning permission was given in August 1979. The objectors exercised a right of appeal to the Court of Session on grounds of procedural faults, but the care taken by the Scottish Office led to the appeal being rejected. The Government's objective was thus eventually secured, but there had been times when the developer's threat to pull out because of the delays seemed a real one.

The other main planning application which had implications of a major kind was, formally speaking, for boring a few holes in the ground near Loch Doon for research purposes and then going away after clearing up the mess. This has become embroiled with the whole issue of disposal of radioactive waste and the nuclear power programme as a whole. The Labour Government clearly did not want to take on this issue, and refused to call in from the local authority the planning application by the UK Atomic Energy Authority for the research drilling, but the incoming Conservative administration could not refuse to consider the appeal which was lodged when the application was refused.

Despite intense campaigning, and pointed references to what George Younger had said in the run-up to the Election about not

proceeding too hastily, the public inquiry was concerned solely with the direct environmental effects of the test bores. A statement⁽⁵⁾ was issued that the inquiry reporter's recommendations would not cover any wider issues although he allowed considerable discussion of them. The inquiry was held in February 1980, but up to the time this article was written no decision had been announced, and it is easy to guess the degree of embarrassment and difficulty which the decision-making must have caused. While it may be necessary to conduct research to assess, in the long term, the feasibility of disposing of radioactive waste underground, among other possibilities, there is no denying the deep concern which even the initial steps arouse. Since the benefits of research, whatever they are, are not to be reaped within 20 years or more it is asking a lot of politicians to make a highly unpopular decision now. The Secretary of State for Scotland is, furthermore, in a highly exposed position if he finds himself pressed to grant planning permission in advance of planning permission for test bores in England. This may well be an area where the pressure of groups and local interests opposed to nuclear power and its by-products are the dominating feature.

Dissatisfaction of a different sort arises in formulating and carrying out policy towards inner city areas, arising not so much from conflicts about objectives as the difficulty in achieving results. Indeed inner cities are a prime example of the limitations of government effectiveness in an area where environmental and social problems are huge, complex and intractable. Over the years a large array of special schemes and powers have been devised to improve the physical condition and the social and economic circumstances of inner cities - the once popular but now discredited programme of comprehensive clearance and redevelopment, the urban programme grants system, the partnerships between central and local government (of which the Glasgow Eastern Area Renewal scheme was the first but not so called), the additional powers given to local authorities under the Inner Urban Areas Act, and the present Government's plans for Enterprise Zones and Urban Development Corporations. The original policy of clearance, as a preliminary to comprehensive redevelopment, was so successful that it is often regarded as the cause of all subsequent inner city problems, because in the current vogue for rehabilitation it is difficult to

remember just how intolerable and incapable of improvement a large proportion of the old city tenements had become, and how essential it was to reduce the density of population before any type of improvement could be contemplated. It would be more pertinent to cite the perennial decay of the older industries as the prime cause of dereliction and here, of course, governments are faced with a problem which has so far proved incapable of solution in a stagnant or declining economy, in spite of the tremendous efforts devoted to fostering new city industry. These efforts, and the work done with the aid of urban programme grant, must be judged a means of slowing down, or at best preventing, the further deterioration of inner city areas rather than a means of rebuilding the economic and social fabric. It is too early yet to see whether Enterprise Zones (which at least have a catchy name in their favour) will be more effective. Urban Development Corporations have not so far been adopted in Scotland; a Conservative working group had advocated one for the GEAR area but the Government found Strathclyde and Glasgow District resolutely opposed to a new authority, and eventually accepted that to impose one would delay progress on the ground. Support for the GEAR project as it was originally organised, on a purely advisory and cooperative basis, was confirmed⁽⁶⁾. It would be wrong to dismiss it as ineffective, since it is bound to take years for a project centred on an intensely difficult area, and requiring the co-operation of a large number of local authorities and government agencies, to achieve its objectives. It has long been clear, however, that in spite of the support given to it by both Labour and Conservative Ministers, its success will be restricted by restraints on capital and current expenditure. In these circumstances the top-level coordinating machinery of GEAR has virtually ceased to function, for the present at least.

It has proved much easier for governments to build roads than to rebuild communities. Because the economic benefits are seen as outweighing damage to the environment, there has been only a fraction of the objection in Scotland to new trunk roads which has been demonstrated in England and Wales. The interests criticising high spending on roads are not so much opposed to roads in themselves as in favour of higher investment in public transport. The govern-

ments of the 70s therefore broadly carried through, although with some delay, the programme of motorway and trunk road construction set out in the White Paper Scottish Roads in the 1970s published at the end of the previous decade. In the last two years the programme has had to take on the additional Conservative Manifesto commitment of dualling the road southwards from Aberdeen, and on the whole appears to be avoiding the worst of the public expenditure cuts.

This does not however lend much weight to the Crossman view that departments have their own preferences which they force on Ministers, since housing, a subject in which the Scottish Development Department is just as interested as roads, has of course changed direction radically under the present Government.

Local opinion has had much more effect on the design of urban roads than on trunk roads. The completion of the Glasgow inner ring road has been stopped by the strength of certain sections of public opinion, as evinced at the inquiry into the Strathclyde Structure Plan, which led the Secretary of State to delete the eastern link when approving the Plan.⁽⁷⁾ Edinburgh finds itself governed by a regional administration which takes its support of public transport and its opposition to road building to lengths which must embarrass a lot of its own supporters, and the government-built trunk roads and motorways around the city will feed into a roads system which is to have only minor improvements. Nevertheless the Government accepted this situation by approving the structure plan⁽⁸⁾, and of course, given their own monetary policy, they could hardly have insisted on Lothian increasing its capital expenditure.

It has never been clear to what extent governments, of either complexion, would really like to foster major investment in public transport. Certainly the public transport lobby has been unable to achieve its aim of a transfer of some 50 per cent of roads expenditure to rail, bus and other forms of public transport, and the Scottish Bus Group has been subjected by the present Government to financial targets more relevant to a fully commercial undertaking than to a subsidised service. This has been the cause of much complaint by some regional authorities, who are asked to pay subsidy for local services in order to bolster up the rate of

return on SEB investment.

In one aspect of transport policy, the Conservatives, in their 1979 election Manifesto for Scotland, made a specific commitment which seems to have caused some problems, considering the length of time taken to make a decision. This was the promise to move closer towards the road equivalent tariff concept in subsidising transport to the Islands. A consultative document was published in March 1980⁽⁹⁾, but was much more non-committal than the election Manifesto, which promised to move closer to road equivalent tariffs. The consultative document revealed that the more distant islands were getting sea transport at a cost less than that of the road equivalent, and suggested that sea transport tariffs based directly on road travel costs for similar lengths of journey would remove incentives to efficiency and economy on the part of the transport undertakings, which would be guaranteed subsidy equivalent to the difference between their own costs, however high, and road equivalent costs. There was also an indication that whatever system was adopted might best be confined to freight only. Up to May, 1981 no decision had been announced by the Government, although some increases in the amount of subsidy paid under the current system had been granted. Constraints on public expenditure may have played some part in the delay, but it would seem that the Conservative Ministers found the problem more complex and difficult than they had assumed before they took office.

A brief survey of a short period is no basis from which to deduce laws about the success and failure in politics, environmental or otherwise, but some hypotheses suggest themselves. For some purposes, a Parliamentary majority remains a pre-requisite, especially where the objective can be readily attained by legislation or control over public expenditure, and the threat of repeal by the Opposition is ineffective. Pressure groups can have local or temporary success, but not if they are in conflict with a determined government. Governments are likely to be more successful in achieving their objects if they administer the function directly than if they have to act through local authorities. Above all, in present circumstances, a policy which costs money is only likely to be successfully pursued if it is one of the favoured few which have been blessed by manifesto.

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